

Illinois Environmental Protection Agency

2200 Churchill Road, Springfield, Illinois 62706



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Mr. George Wolff, Chief
Environmental Control Division
Office of the Attorney General
188 West Randolph, Suite 2315
Chicago, Illinois 60601

ILL. E.P.A. - D.L.P.C.
STATE OF ILLINOIS

Re: EPA v. LoBue, Incorporated, an Illinois corporation, and LoBue
EPA File No. 5366 Excavating Company

Dear George:

Enclosed are materials assembled by the Environmental Protection Agency supporting the filing of an enforcement action before the Illinois Pollution Control Board against LoBue, Incorporated, and LoBue Excavating Company. The Agency requests you to represent it.

If, after you have reviewed these materials, you agree to do so, please let the assigned Technical Advisor know in writing and send the assigned Technical Advisor a draft complaint. After you and the assigned Technical Advisor agree on the draft complaint, I will send you a letter asking you to file the complaint before the Board.

If you decide that you cannot represent the Agency in this case, please return the materials to me with a statement of your reasons.

Very truly yours,

William Seltzer
William Seltzer
Senior Technical Advisor
Enforcement Programs

Kathryn Guselson
Prepared by Legal Investigator
Assigned Technical Advisor: L. Breitkopf

Enclosure

cc: Public Affairs (w/enclosure)
Docket Control
Region File K. Bechley
L. Breitkoff
B. Child

EPA v. LoBue, Incorporated, an Illinois Corporation
and LoBue Excavating Company

EPA #5366

By: K. Engelson

I. DESCRIPTION OF POLLUTION SOURCE

This site is owned by LoBue, Incorporated. Prior Agency communication has been directed to the site operator, LoBue Excavating Company, 344 East 16th Street, Chicago Heights, Illinois 60411. The site, known in Agency files as LoBue #2, consists of approximately 25 acres and is bordered on the north, east, and south sides by industrial property and on the west side by agricultural property. The site is located on the north side of Sauk Trail Road, just west of State Street in Chicago Heights, Cook County, Illinois. The legal description of the site is:

The West 1/2 Quarter of the Northeast
1/4 of Section 33, Township 35 North,
Range 14 East of the Third Principal
Meridian in Cook County, Illinois.

The site is permitted to accept foundry sand, slag, cinders, soil, concrete, brick, asphalt, cardboard and demolition debris. Additionally, a special condition of the operating permit allows sand and cinders to be stockpiled in the southeast corner of the site. However, this condition as well as other permit conditions have been abused. Unpermitted materials such as 55 gallon drums containing paint and solvents have been stockpiled and permitted materials have been stored in undesignated areas of the site. Continuous daily cover violations have been documented and water has been pumped off-site prior to testing for quality.

LoBue, Incorporated is an Illinois corporation in good standing. The registered agent is Sam LoBue, 344 East 16th Street, Chicago Heights, Illinois 60411. (Reference: call to Office of Secretary of State, Corporation Division on March 31, 1980, see Exhibit 1.)

II. AGENCY HISTORY

On July 26, 1972, the Board ordered LoBue, Inc. to cease and desist from depositing refuse at the #2 site until such time as a permit was issued. EPA v. LoBue, Inc., et. al., PCB #72-3. (Exhibit 1(a).) In accordance with a permit application submitted to the Agency on December 13, 1974, a developmental permit was issued September 16, 1975 with a special condition that the on-site pond located in the Southeast corner of the site be dewatered prior to disposing of refuse. (Exhibit 2.) After an Agency inspection determined the site had met the terms of the developmental permit and the pond had been dewatered, an operating permit was issued on December 17, 1975, allowing the storing of recycled sand and cinders in the southeast corner of the site. (Exhibit 3.) Supplemental permits were issued December 17, 1975 and January 19, 1977. (Exhibits 4 and 5 respectfully.) The last supplemental permit was issued December 8, 1978 setting forth parameters for testing impounded ground or surface water as well as permitting the disposal of refuse in an area free of impounded water. (Exhibit 6.)

Throughout the history of the site under its operating permit, violations resulting from the ponded water at the site were noted. Agency notifications were repeatedly sent LoBue advising that the pond in the southeast portion of the site was to be dewatered and analyzed relative to water quality standards prior to filling the pond with refuse. (See Agency letters identified as Exhibits 7, 8, 9, 10, and 11.) In a letter dated January 20, 1978, Respondent advised the Agency that water analyses would be done prior to the water being pumped off-site. (Exhibit 11(a).) However, Agency inspection reports from January 9, 1978 through December 28, 1979 evidenced refuse was being deposited in standing water. (Exhibits 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21.) Moreover, in a letter of January 4, 1979, the Agency Permit Section informed the Respondent that water sampled from the pond exceeded the effluent standards. (See Exhibit 22.) An inspection report dated April 12, 1978 noted water was being pumped out of the pond without prior testing for water quality. (See Exhibit 14 and 14(a).) This was a direct violation of Special Condition No. 2 of the operating permit which states "All ground and/or surface water leaving the site shall meet applicable water quality standards". (Exhibit 3.) In a memorandum dated April 17, 1978, Kenneth Bechely explained that unsampled water had been pumped from the pond into a drainage ditch that emptied into an off-site creek. (Exhibit 23.) The pond scenario ended when an inspection report of January 21, 1980 indicated the pond had become non-existent as a result of the Respondent filling it with refuse. (Exhibit 24.)

Violations of the Illinois Environmental Protection Act and of the Illinois Pollution Control Board Rules and Regulations, Chapter 7: Solid Waste and Chapter 3: Water Pollution include permit violations, open dumping, water pollution, inadequate daily cover, improper unloading, inadequate spreading and compacting, insufficient equipment, leachate problems and exceeding effluent standards.

More specifically, daily cover violations have existed at the site since January, 1978. Evidence substantiating a continuous daily cover violation from August, 1978 through the present includes numerous Agency photographs as well as the projected testimony by an Agency Field Operation Investigator. (See Exhibits, 26, 27, 28, 29, 30.) Also, past leachate problems were noted in the Agency file during the November 6, 1979 inspection report in which leachate was observed moving into the ponded water. (Exhibit 21.) Further, in the December 28, 1979 inspection report, leachate was ponded at the southeast corner of the site. (Exhibit 22.) Finally, violations regarding inadequate spreading and compacting, refuse not being deposited at toe of slope, in addition to insufficient operable equipment on site were noted at almost every Agency inspection report. (See violation Section III(B) and Exhibits 48 and 49.)

Another recurring problem at the site has been accepting unpermitted refuse such as 55 gallon drums, (Exhibits 31 and 33), rubber tires, (Exhibits 34 and 35) garbage, (Exhibit 34) as well as small amounts of hazardous wastes including paint and solvents (Exhibit 30). During numerous agency inspection reports, empty drums were found at the site. (See Exhibits 15, 19, 20, 21, 36, 46 and 47.) An Agency inspector noted

during a September 20, 1979 inspection that paint and solvents were dumped adjacent to the ponded water and unpermitted materials had been stockpiled with permitted materials. (Exhibit 37.) Photographs taken September 20, 1979 illustrate these violations. (Exhibit 30.)

Additional photographs taken by an Agency inspector confirm garbage, drums and other unpermitted materials were disposed of in the pond and on the side of the pond. (Exhibits 31, 32, and 33.) This is a violation of the supplemental permit issued December 8, 1978, Special Condition No. 3 which states "The area to receive refuse shall be free of impounded water before any refuse may be deposited at the top of the slope".

Although the Agency has notified the Respondent of these continuous, past, and present violations, the Respondent has virtually ignored the Agency's correspondence. In total, the Agency has sent 5 warning letters in 1978, 4 warning letters in 1979 and 3 warning letters in 1980. (See Exhibits 7, 8, 9, 10, 11, 38, 39, 40, 41, 42, 43, and 44.)

The only response the Agency has received was a letter from the Respondent's attorney dated November 5, 1979 stating that LoBue had cured violations noted in an agency letter dated October 23, 1979. (Exhibit 45.) However, an inspection report of November 6, 1979 evidenced violations at the site remained. (Exhibit 21.)

III. VIOLATIONS

The following violations may be included in the complaint:

A. VIOLATIONS OF THE ACT

<u>Agency Inspections</u>	<u>Section(s) Violated</u>	<u>Content of Section(s) Violated</u>
01/09/78 Inspection	21(a)	open dumping
03/09/78 Inspection	21(a)	open dumping
04/12/78 Inspection	21(a); 12(d)	open dumping; water pollution
08/25/78 Inspection	21(a); 21(d); 12(d)	open dumping; permit; water pollution
09/06/78 Inspection	21(a); 12(d)	open dumping; water pollution
10/26/78 Inspection	21(a); 21(d); 12(d)	open dumping; permit; water pollution
11/15/78 Inspection	21(a); 21(d); 12(d)	open dumping; permit; water pollution
02/08/79 Inspection	21(a)	open dumping
07/26/79 Inspection	21(a)	open dumping
09/20/79 Inspection	21(a); 21(d); 12(d)	open dumping; permit; water pollution
11/06/79 Inspection	21(a); 21(d); 12(d)	open dumping; permit; water pollution
12/28/79 Inspection	21(a); 21(d); 12(d)	open dumping; permit; water pollution
01/21/80 Inspection	21(a); 21(d); 12(d)	open dumping; permit; water pollution
02/27/80 Inspection	21(a); 21(d)	open dumping; permit
03/27/80 Inspection	21(a); 21(d); 12(d)	open dumping; permit; water pollution

B. VIOLATIONS OF CHAPTER 7: SOLID WASTE

<u>Agency Inspections</u>	<u>Rule(s) Violated</u>	<u>Content of Rule(s) Violated</u>
01/09/78 Inspection	302; 303(a); 303(b); 305(a)	permit; unloading into toe; spreading and compacting; daily cover
03/09/78 Inspection	302; 303(a); 303(b); 304	permit; unloading into toe; spreading and compacting; equipment
04/12/78 Inspection	302; 303(a); 305(a); 313	permit; unloading into toe; daily cover; water pollution
08/25/78 Inspection	302; 303(a); 303(b); 304; 305(a); 313; 314(c)	permit; unloading into toe; spreading and compacting; equipment; daily cover; water pollution; site access
09/06/78 Inspection	302; 303(b); 305(a); 313	permit; spreading and compacting; daily cover; water pollution
10/26/78 Inspection	302; 303(a); 303(b); 304; 305(a); 313; 314(c)	permit; unloading into toe; spreading and compacting; equipment; daily cover; water pollution; site access
11/15/78 Inspection	302; 303(a); 303(b); 305(a); 313	permit; unloading into toe; spreading and compacting; daily cover; water pollution
02/08/79 Inspection	303(a); 303(b); 304; 305(a)	unloading into toe; spreading and compacting; equipment; daily cover
07/26/79 Inspection	303(a); 303(b); 304; 305(a)	unloading into toe; spreading and compacting; equipment; daily cover
09/20/79 Inspection	302; 303(b); 304; 305(a); 310(b); 313; 314(e)	permit; spreading and compacting; equipment; daily cover; hazardous liquid waste; water pollution; leachate

B. VIOLATIONS OF CHAPTER 7: SOLID WASTE (Continued)

<u>Agency Inspections</u>	<u>Rule(s) Violated</u>	<u>Content of Rule(s) Violated</u>
11/06/79 Inspection	302; 303(b); 304; 305(a); 313; 314(e)	permit; spreading and compacting; equipment; daily cover; water pollution; leachate
12/28/79 Inspection	302; 303(b); 304; 305(a); 313; 314(e)	permit; spreading and compacting; equipment; daily cover; water pollution; leachate
01/21/80 Inspection	302; 305; 313	permit; daily cover; water pollution
02/27/80 Inspection	302; 305(a)	permit; daily cover
03/27/80 Inspection	302; 305(a)	permit; daily cover

C. VIOLATIONS OF CHAPTER 3: WATER POLLUTION

<u>Sample</u>	<u>Rule(s) Violated</u>	<u>Content of Rule(s) Violated</u>
12/26/78 analysis of surface water sampled 12/22/78	408(a)	effluent standard in Total Dissolved Solids' parameter

IV. WITNESS LIST

The following Agency witnesses should be called to prove the violations charged:

Kenneth Bechaly, Field Operations Section, Division of
Land Pollution Control

Clarence Bieze, Jr., Field Operations Section, Division of
Land Pollution Control

(Witness Qualifications are attached.)

The following persons should also be considered as possible witnesses to prove the violations charged:

Bonnie Eleder, Field Operations Section, Division of Land Pollution Control

Nancee Rahn, previously employed in Field Operations Section, Division of Land Pollution Control

V. PROPOSED BOARD ORDER

A. A Board Order should be obtained requiring Respondent to take the following action:

1. Cease and desist from all violations of the Act and Regulations.
2. Cease and desist from disposing of any unpermitted materials at the site until proper permits are obtained.
3. Within 30 days of the Board's Order, properly cover all areas of the site requiring daily cover in accordance with Illinois Pollution Control Board Rules and Regulations, Chapter 7: Solid Waste.

B. The Agency believes a penalty of \$5,000 should be assessed against the Respondent because this is the second enforcement action involving this site, continuous and intermittent violations have been alleged, and the Respondent has made little effort towards compliance. Additionally, the Respondent has economically benefited through non-compliance by failing to apply final cover for a period of two years. Finally, the Respondent has extended the life of the site by operating without removing any on-site soil for daily cover purposes.

List of Exhibits

Exhibit # 1 -- Memo from K.E. to file dated 4/10/80
Exhibit # 1(a) -- Opinion and Order, PCB #72-3
Exhibit # 2 -- Developmental permit dated 9/16/75
Exhibit # 3 -- Operational permits dated 12/17/75
Exhibit # 4 -- Supplemental permit dated 12/17/75
Exhibit # 5 -- Supplemental permit dated 1/19/77
Exhibit # 6 -- Supplemental permit dated 12/8/78
Exhibit # 7 -- Letter 1/19/78
Exhibit # 8 -- Letter 4/25/78
Exhibit # 9 -- Letter 9/12/78
Exhibit #10 -- Letter 11/28/78
Exhibit #11 -- Letter 12/5/78
Exhibit #11(a) -- Letter from Respondent dated 1/20/78
Exhibit #12 -- Inspection 1/9/78
Exhibit #13 -- Inspection 3/8/78
Exhibit #14 -- Inspection 4/12/78
Exhibit #14(a) -- Photos 4/12/78
Exhibit #15 -- Inspection 8/25/78
Exhibit #16 -- Inspection 9/6/78
Exhibit #17 -- Inspection 10/26/78
Exhibit #18 -- Interoffice memo dated 10/26/78
Exhibit #19 -- Inspection 11/15/78
Exhibit #20 -- Inspection 9/20/79
Exhibit #21 -- Inspection 11/6/79
Exhibit #22 -- Inspection 12/28/79
Exhibit #23 -- Letter w/attachments from Terry Ayers to Respondent dated 1/4/79

Exhibit #24 -- Memo from Bechley dated 4/17/78
Exhibit #25 -- Inspection 1/21/80
Exhibit #26 -- Agency photos dated 8/25/78
Exhibit #27 -- Agency photos dated 10/26/78
Exhibit #28 -- Agency photos dated 11/15/78
Exhibit #29 -- Agency photos dated 7/26/79
Exhibit #30 -- Agency photos dated 9/20/79
Exhibit #31 -- Agency photos dated 11/6/79
Exhibit #32 -- Agency photos dated 12/28/79
Exhibit #33 -- Agency photos dated 1/21/80
Exhibit #34 -- Agency photos dated 2/27/80
Exhibit #35 -- Agency photos dated 3/27/80
Exhibit #36 -- Inspection Report of 2/27/80
Exhibit #37 -- Memo from Bieze dated 9/20/79
Exhibit #38 -- Agency letter dated 3/5/79
Exhibit #39 -- Agency letter dated 8/13/79
Exhibit #40 -- Agency letter dated 9/23/79
Exhibit #41 -- Agency letter dated 11/29/79
Exhibit #42 -- Agency letter dated 1/15/80
Exhibit #43 -- Agency letter dated 2/12/80
Exhibit #44 -- Agency letter dated 3/14/80

List of Exhibits (continued)

Exhibit #45 -- Letter from Respondent's attorney dated 11/5/79
Exhibit #46 -- Agency Inspection Report dated 1/21/80
Exhibit #47 -- Agency Inspection Report dated 3/27/80
Exhibit #48 -- Agency Inspection Report dated 2/8/79
Exhibit #49 -- Agency Inspection Report dated 7/26/79

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